

August 31, 2017

Steven A. Broeckaert
Senior Deputy Chief, Policy Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington DC, 20554

**Re: Ellington Broadcasting, WHCQ-LD v Cable One Inc. (MB Docket 17-96),
Memorandum Opinion and Order, DA 17-710 (rel. July 24, 2017).**

**Ellington Broadcasting, WPRQ-LD v Cable One Inc. (MB Docket 17-58),
Memorandum Opinion and Order, DA 17-711 (rel. July 24, 2017).**

Dear Mr. Broeckaert:

Cable One Inc. (“Cable One”) hereby responds to the August 22, 2017 filing in the above captioned matters by Ellington Broadcasting (“Ellington”) regarding Cable One’s August 9, 2017 signal tests and Ellington’s requested carriage of WPRQ-LD (Clarksdale, MS) and WHCQ-LD (Cleveland, MS) on Cable One’s Cleveland and Clarksdale cable systems. In that filing Ellington makes incorrect assertions about the scope of Section 111 of the Copyright Act, Cable One’s ability to require indemnification for distant signal copyright liability and the status of third-party low power station WNBD-LD. We write today to clarify the law on these issues.

Regarding Ellington’s request that WHCQ-LD be carried on Cable One’s Clarksdale system, Cable One is fully within its rights to require indemnification from Ellington under Section 614(b)(10)(B) of the Communications Act¹ for any additional distant signal carriage liability that would result from such carriage pursuant to Section 111(f)(4) of the Copyright Act.² As the Commission explained in the Broadcast Signals Reconsideration Order: “Under the 1992 Cable Act, a cable operator is generally not required to carry a station that would otherwise

¹ 47 U.S.C. § 534(b)(10)(B) (“[A] cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17 as indemnification for any increased copyright liability resulting from carriage of such signal”).

² 17 U.S.C. § 111(f)(4) (“In the case of a low power television station, as defined by the rules and regulations of the Federal Communications Commission, the “local service area of a primary transmitter” comprises the designated market area, as defined in section 122(j)(2)(C), that encompasses the community of license of such station and any community that is located outside such designated market area that is either wholly or partially within 35 miles of the transmitter site. . .”).

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qualify for must-carry status if the station would be considered distant for copyright purposes, unless the station indemnifies the cable operator for its copyright liability.”³ It is plain then that Cable One may require indemnification to the extent that carriage of WHCQ-LD would cause it to incur additional distant signal liability.

Ellington asserts in rebuttal that the STELA amendments to the Copyright Act in 2010 negate such a requirement by limiting distant signal liability to only those communities that are actually served by a system. While we do not disagree with that assertion, it misses the point. The issue here is that the Clarksdale system will have no choice but to carry WHCQ-LD in several communities, namely Batesville (MS0063), Courtland (MS0518), Pope (MS0519) and unincorporated Panola (MS0520), which are located in Panola County in the Memphis DMA.⁴ As currently configured, the cable system headend is not technically equipped to segregate retransmitted signals amongst the various communities it serves. Cable One thus has no choice if it is to carry WHCQ-LD in Clarksdale but to also carry the signal in the additional communities located in the Memphis DMA.⁵

This retransmission of the station to communities in the Memphis DMA will very likely cause the system to be subject to additional distant signal copyright liability. The Commission has explained in such situations, the cable operator is fully entitled to require indemnification: “We clarify that, in situations where copyright liability is incurred for carriage in some of the communities served by a single cable system, the broadcaster must indemnify the operator for that copyright liability for carriage in any community served by the system, unless the operator is able to provide different channel line-ups to the different communities.”⁶ As carriage of WHCQ-LD in the Memphis DMA opens the Clarksdale system to the likelihood of additional distant

³ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723, 6736 (1994).

⁴ Ellington correctly asserts that as of 2006 the Cable One systems in Batesville, MS was separate from that serving Clarksdale, MS. However, Cable One consolidated these system that year, serving all communities from the Clarksdale system’s headend, and to reflect that change filed an update with the FCC to include all communities served by this consolidated system under a single PSID. *See*, Cable One Inc., Operator Change Request, reference number 175356502 (filed Aug. 15, 2006).

⁵ The Commission has definitively held that where, as here, a cable system “straddles” two DMAs, and it is not technically possible to segregate carriage of must carry local broadcast stations in each DMA, the cable system is required to retransmit the station across the entire system and to all served communities regardless of DMA. *Complaint of Vision 3 Broadcasting, Inc. Against Time Warner Cable; Request for Carriage*, 14 FCC Rcd 20632, 20638 (1999) (“*Vision Broadcasting*”).

⁶ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723, note 191 (1994).

signal copyright liability, Cable One is entitled under Section 614(b)(10)(B) to require Ellington to indemnify it for any additional liability actually incurred.

With regard to carriage of WPRQ-LD on Cable One's Cleveland system, Ellington objects to the assertion that even if WPRQ-LD were to meet the "qualified low power station" test by delivering a good quality signal to the Cleveland headend (which Ellington concedes it cannot), Cable One would still not be required to carry the station as the system's statutory quota for low power station carriage is already filled. Pursuant to Section 614(c)(1)(B) of the Communications Act, the cable system is only required to carry two low power stations.⁷ As the Cleveland system already carries two low power stations WNBD-LD and WHCQ-LD, carriage of WPRQ-LD, a third low power station, would not be required even if it delivered a good quality signal.

Ellington responds that WNBD-LD should not count as one of the two qualified low power station with regard to the Cleveland system because the station's city of license in Grenada, MS is located over 35 miles from the Cleveland headend. Ellington misapplies the relevant test here. Under Section 76.55(d)(4), it is the station's actual transmitter location, and not the city of license, that is the relevant measuring point.⁸ The Commission's station data base for WNDB-LD (attached as Exhibit 1) shows that the station is located at and transmits from 33° 22' 23" N Latitude, 90° 32' 25" W Longitude. As demonstrated by the distance calculation attached as Exhibit 2, the station is actually located 27.71 miles from Cable One's Cleveland headend located at 33° 44' 38" N Latitude, 90° 43' 29" W Longitude. Ellington is thus incorrect that WNDB-LD fails the qualified low power test based on distance. As Cable One's Cleveland system already carries two qualified low power stations, carriage of WPRQ-LD would not be required even if it delivered a good quality signal.

⁷ 47 U.S.C. § 534(c)(1)(B).

⁸ 47 C.F.R. § 76.55(d)(4); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567, 6858 n.1981 (2014) (noting that a Class A station's "cable carriage rights will depend upon its ability to meet the same requirements applicable to qualified low power stations at its new location, including that... (ii) its transmitter be within 35 miles of the cable system's principal headend"). See also *Vision Broadcasting*, supra n.5.

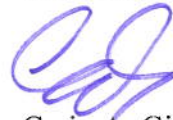
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Should there be any further questions regarding this matter, please contact the undersigned.

Sincerely,



Craig A. Gilley
Counsel for Cable One Inc.

cc: David Ellington
Ellington Broadcasting
P.O. Box 617
Webb, MS 38966

71570254v.2

EXHIBIT 1

WNBD-LD

MS GRENADA

USA

LD LIC

Licensee: CALA BROADCAST PARTNERS LLC
 Service Designation: LD Digital Low Power Television station (Digital LPTV)
 Transmit Channel: 33 584 - 590 MHz Licensed
 Virtual Channel: (viewer sees this channel number)
 Network affiliation: -
 Designated Market Area (DMA): -

File No.: BLDTL-20101020ACE

Facility ID number: 181137

CDBS Application ID No.: 1404017

Technical Data

Links & Maps

33° 22' 23.00" N Latitude 33.373056
 90° 32' 25.00" W Longitude (NAD 27) -90.540278

Effective Radiated Power (ERP):

Polarization:

Antenna Height Above Average Terrain:

15.

kw ERP

Antenna Height Above Mean Sea Level:

-

meters HAAT - [Calculate HAAT](#)

Antenna Height Above Ground Level:

607.

meters AMSL

572.

meters AGL

Directional

Antenna ID No.: 95163

Pattern Rotation: 0.0

Antenna Make: -

Antenna Model: -

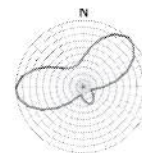
Relative Field values for directional antenna

Relative field values listed here do not include any pattern rotation that may be indicated above.

0° 0.451	60° 0.868	120° 0.140	180° 0.190	240° 0.696	300° 0.606
10° 0.606	70° 0.696	130° 0.190	190° 0.140	250° 0.868	310° 0.451
20° 0.780	80° 0.497	140° 0.244	200° 0.125	260° 0.976	320° 0.363
30° 0.924	90° 0.314	150° 0.278	210° 0.182	270° 0.995	330° 0.338
40° 0.995	100° 0.182	160° 0.278	220° 0.314	280° 0.924	340° 0.338
50° 0.976	110° 0.125	170° 0.244	230° 0.497	290° 0.780	350° 0.363

Additional azimuths:

43° 1.000 267° 1.000
 113° 0.123
 197° 0.123



Additional Individual Tower Information from the Antenna Structure Registration database.
 (Use the Registration Number link for detailed information.)

ASRN	Site	Overall Height	Overall Height	NAD 83 Tower Coordinates			Convert to
	Elevation	Above Ground	Above Mean Sea	Latitude	Longitude		NAD 27
	(meters)	(meters)	Level (meters)				To NAD27
1051861	34.9	608.2	643.1	N 33° 22' 23.0"	W 90° 32' 25.0"		

FAA: obstruction/Airport Airspace searches

*** 1 Records Retrieved ***

Return to TV Query Data Entry screen

EXHIBIT 2

Distance Calculation Worksheet

DISTANCE FROM:

	Community	Latitude			Longitude		
		deg	min	sec	deg	min	secs
A	WNBD-LP Transmitter	33	22	23	90	32	25
B							
C							
D							
E							

DISTANCE TO:

	Community	Latitude			Longitude			A miles	B miles	C miles	D miles	E miles
		deg	min	sec	deg	min	secs					
1	Cleveland, MS Headend	33	44	38	90	43	29	27.71704				
2												
3												
4												
5												
6												
7												
8												
9												
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